

Senate File 2223 - Introduced

SENATE FILE _____
BY COMMITTEE ON NATURAL
RESOURCES AND
ENVIRONMENT

(SUCCESSOR TO SF 2077)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to renewable energy, providing for state bank
2 acquisition of equity interests in wind energy production
3 facilities, and providing for qualification for specified tax
4 credits and refunds by state banks and by owners or
5 manufacturing facilities generating wind energy for on-site
6 consumption rather than sale, and providing effective and
7 applicability dates.
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
9 TLSB 5589SV 82
10 rn/rj/24

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DIVISION I

BANK WIND ENERGY INVESTMENT

1 2 Section 1. Section 524.802, Code 2007, is amended by
1 3 adding the following new subsection:
1 4 NEW SUBSECTION. 13A. Provide customer financing for wind
1 5 energy production facilities eligible for production tax
1 6 credits pursuant to chapter 476B in a manner that maximizes
1 7 the availability of production tax credits to the state bank,
1 8 including structuring such financing as a membership
1 9 investment whereby the state bank as equity investor may take
1 10 a majority financial position, but not a management position,
1 11 in each such facility, subject to the following:
1 12 a. Prior to providing financing, a creditworthiness review
1 13 shall be conducted pursuant to the state bank's standard loan
1 14 underwriting criteria.
1 15 b. The state bank shall not participate in the operation
1 16 of the facility, the production of wind energy, or the sale of
1 17 wind energy if such sale is contemplated by the customer.
1 18 c. If the facility does not perform as projected in the
1 19 equity investment agreement, the state bank may either sell
1 20 its interest in the facility or pursue liquidation.
1 21 d. The state bank shall not share in any appreciation in
1 22 value of its interest in the facility or in any of the
1 23 customer's real or personal assets.
1 24 e. At the end of any applicable holding period, the state
1 25 bank shall sell at book value its ownership interest in the
1 26 facility.
1 27

DIVISION II

WIND ENERGY PRODUCTION TAX CREDITS AND REFUNDS

1 29 Sec. 2. Section 423.4, subsection 4, Code Supplement 2007,
1 30 is amended to read as follows:
1 31 4. A person in possession of a wind energy production tax
1 32 credit certificate pursuant to chapter 476B or a renewable
1 33 energy tax credit certificate issued pursuant to chapter 476C
1 34 may apply to the director for refund of the amount of sales or
1 35 use tax imposed and paid upon purchases made by the applicant.
2 1 a. The refunds may be obtained only in the following
2 2 manner and under the following conditions:
2 3 (1) On forms furnished by the department and filed by
2 4 January 31 after the end of the calendar year in which the tax
2 5 credit certificate is to be applied, the applicant shall
2 6 report to the department the total amount of sales and use tax
2 7 paid during the reporting period on purchases made by the
2 8 applicant.
2 9 (2) The applicant shall separately list the amounts of
2 10 sales and use tax paid during the reporting period.
2 11

2 12 (3) If required by the department, the applicant shall
2 13 prove that the person making the sales has included the amount
2 14 thereof in the computation of the sales price of such person
2 15 and that such person has paid the tax levied by this
2 16 subchapter or subchapter III, based upon such computation of
2 17 the sales price.

2 18 (4) The applicant shall provide the tax credit
2 19 certificates issued pursuant to chapter 476B or 476C to the
2 20 department with the forms required by this paragraph "a".

2 21 b. If satisfied that the foregoing conditions and
2 22 requirements have been complied with, the director shall
2 23 refund the amount claimed by the applicant for an amount not
2 24 greater than the amount of tax credits issued in tax credit
2 25 certificates pursuant to chapter 476B or 476C.

2 26 Sec. 3. Section 437A.17B, Code 2007, is amended to read as
2 27 follows:

2 28 437A.17B REIMBURSEMENT FOR RENEWABLE ENERGY.

2 29 A person in possession of a wind energy tax credit
2 30 certificate issued pursuant to chapter 476B or a renewable
2 31 energy tax credit certificate issued pursuant to chapter 476C
2 32 may apply to the director for a reimbursement of the amount of
2 33 taxes imposed and paid by the person pursuant to this chapter
2 34 in an amount not more than the person received in wind energy
2 35 tax credit certificates pursuant to chapter 476B or renewable

3 1 energy tax credit certificates pursuant to chapter 476C. To
3 2 obtain the reimbursement, the person shall attach to the
3 3 return required under section 437A.8 the wind energy tax
3 4 credit certificates issued to the person pursuant to chapter
3 5 476B, or the renewable energy tax credit certificates issued
3 6 to the person pursuant to chapter 476C, and provide any other
3 7 information the director may require. The director shall
3 8 direct a warrant to be issued to the person for an amount
3 9 equal to the tax imposed and paid by the person pursuant to
3 10 this chapter but for not more than the amount of the wind
3 11 energy tax credit certificates or renewable energy tax credit
3 12 certificates attached to the return.

3 13 Sec. 4. Section 476B.1, subsection 4, paragraph c, Code
3 14 2007, is amended to read as follows:

3 15 c. Was originally placed in service on or after July 1,
3 16 2005, but before July 1, ~~2009~~ 2012.

3 17 Sec. 5. Section 476B.1, subsection 4, Code 2007, is
3 18 amended by adding the following new paragraph:

3 19 NEW PARAGRAPH. d. Consists of one or more wind turbines
3 20 connected to a common gathering line which have a combined
3 21 nameplate capacity of less than thirty-five megawatts.

3 22 Sec. 6. Section 476B.2, Code 2007, is amended to read as
3 23 follows:

3 24 476B.2 GENERAL RULE.

3 25 The owner of a qualified facility shall, for each
3 26 kilowatt-hour of qualified electricity that the owner sells or
3 27 uses for on-site consumption during the ten-year period
3 28 beginning on the date the qualified facility was originally
3 29 placed in service, be allowed a wind energy production tax
3 30 credit to the extent provided in this chapter against the tax
3 31 imposed in chapter 422, divisions II, III, and V, and chapter
3 32 432, and may claim a refund of tax imposed by chapter 423 or
3 33 437A for any tax year within the time period set forth in
3 34 section 423.47 or 437A.14.

3 35 Sec. 7. Section 476B.3, Code 2007, is amended to read as
4 1 follows:

4 2 476B.3 CREDIT AMOUNT.

4 3 The wind energy production tax credit allowed under this
4 4 chapter equals the product of one cent multiplied by the
4 5 number of kilowatt-hours of qualified electricity sold or used
4 6 for on-site consumption by the owner during the taxable year.

4 7 Sec. 8. Section 476B.5, subsection 1, paragraph e, Code
4 8 2007, is amended to read as follows:

4 9 e. ~~Except when electricity is used for on-site~~
4 10 consumption, a copy of an executed power purchase agreement or
4 11 other agreement to purchase electricity upon completion of the
4 12 project. An executed interconnection agreement or
4 13 transmission service agreement shall be accepted by the board
4 14 under this paragraph if the owner of the facility has agreed
4 15 to sell electricity from the facility directly or indirectly
4 16 to a wholesale power pool market.

4 17 Sec. 9. Section 476B.6, subsection 2, Code 2007, is
4 18 amended by adding the following new paragraph:

4 19 NEW PARAGRAPH. f. For a facility in which electricity is
4 20 used for on-site consumption, the requirements of paragraphs
4 21 "c" and "d" shall not be applicable.

4 22 Sec. 10. Section 476B.6, subsection 3, Code 2007, is

4 23 amended to read as follows:

4 24 3. The board shall notify the department of the amount of
4 25 kilowatt=hours generated and purchased from a qualified
4 26 facility or generated and used on-site by a qualified
4 27 facility. The department shall calculate the amount of the
4 28 tax credit for which the applicant is eligible and shall issue
4 29 the tax credit certificate for that amount or notify the
4 30 applicant in writing of its refusal to do so. An applicant
4 31 whose application is denied may file an appeal with the
4 32 department within sixty days from the date of the denial
4 33 pursuant to the provisions of chapter 17A.

4 34 Sec. 11. Section 476B.6, subsection 5, paragraph d, Code
4 35 2007, is amended to read as follows:

5 1 d. If the tax credit application is filed by a
5 2 partnership, limited liability company, S corporation, estate,
5 3 trust, or other reporting entity, all of whose income is taxed
5 4 directly to its equity holders or beneficiaries for the taxes
5 5 imposed under chapter 422, division V, or under chapter 423,
5 6 432, or 437A, the tax credit certificate shall be issued
5 7 directly to the partnership, limited liability company, S
5 8 corporation, estate, trust, or other reporting entity.

5 9 Sec. 12. Section 476B.7, unnumbered paragraph 1, Code
5 10 2007, is amended to read as follows:

5 11 Wind energy production tax credit certificates issued under
5 12 this chapter may be transferred to any person or entity.
5 13 Within thirty days of transfer, the transferee must submit the
5 14 transferred tax credit certificate to the department along
5 15 with a statement containing the transferee's name, tax
5 16 identification number, and address, and the denomination that
5 17 each replacement tax credit certificate is to carry and any
5 18 other information required by the department. Within thirty
5 19 days of receiving the transferred tax credit certificate and
5 20 the transferee's statement, the department shall issue one or
5 21 more replacement tax credit certificates to the transferee.
5 22 Each replacement certificate must contain the information
5 23 required under section 476B.6 and must have the same effective
5 24 taxable year and the same expiration date that appeared in the
5 25 transferred tax credit certificate. Tax credit certificate
5 26 amounts of less than the minimum amount established by rule of
5 27 the board shall not be transferable. A tax credit shall not
5 28 be claimed by a transferee under this chapter until a
5 29 replacement tax credit certificate identifying the transferee
5 30 as the proper holder has been issued. A replacement tax
5 31 credit certificate may reflect a different type of tax than
5 32 the type of tax noted on the original tax credit certificate.

5 33 Sec. 13. Section 476B.7, unnumbered paragraph 2, Code
5 34 2007, is amended to read as follows:

5 35 The tax credit shall ~~only be transferred once~~ be freely
6 1 transferable. The transferee may use the amount of the tax
6 2 credit transferred against the taxes imposed under chapter
6 3 422, divisions II, III, and V, and chapter 432 for any tax
6 4 year the original transferor could have claimed the tax
6 5 credit. The transferee may claim a refund under chapter 423
6 6 or 437A for any tax year within the time period set forth in
6 7 section 423.47 or 437A.14 for which the original transferor
6 8 could have claimed a refund. Any consideration received for
6 9 the transfer of the tax credit shall not be included as income
6 10 under chapter 422, divisions II, III, and V. Any
6 11 consideration paid for the transfer of the tax credit shall
6 12 not be deducted from income under chapter 422, divisions II,
6 13 III, and V.

6 14 Sec. 14. Section 476B.8, Code 2007, is amended to read as
6 15 follows:

6 16 476B.8 USE OF TAX CREDIT CERTIFICATES.

6 17 To claim a wind energy production tax credit under this
6 18 chapter, a taxpayer must attach one or more tax credit
6 19 certificates to the taxpayer's tax return, or if used against
6 20 taxes imposed under chapter 423, the taxpayer shall comply
6 21 with section 423.4, subsection 4, or if used against taxes
6 22 imposed under chapter 437A, the taxpayer shall comply with
6 23 section 437A.17B. A tax credit certificate shall not be used
6 24 or attached to a return filed for a taxable year beginning
6 25 prior to July 1, 2006. The tax credit certificate or
6 26 certificates attached to the taxpayer's tax return shall be
6 27 issued in the taxpayer's name, expire on or after the last day
6 28 of the taxable year for which the taxpayer is claiming the tax
6 29 credit, and show a tax credit amount equal to or greater than
6 30 the tax credit claimed on the taxpayer's tax return. Any tax
6 31 credit in excess of the taxpayer's tax liability for the
6 32 taxable year may be credited to the taxpayer's tax liability
6 33 for the following seven taxable years or until depleted,

6 34 whichever is the earlier. If the tax credit is applied
6 35 against the taxes imposed under chapter 423 or 437A, any
7 1 credit in excess of the taxpayer's tax liability is carried
7 2 over and can be filed with the refund claim for the following
7 3 seven tax years or until depleted, whichever is earlier.
7 4 However, the certificate shall not be used to reduce tax
7 5 liability for a tax period ending after the expiration date of
7 6 the certificate.

7 7 Sec. 15. EFFECTIVE AND APPLICABILITY DATES. This Act,
7 8 being deemed of immediate importance, takes effect upon
7 9 enactment and is retroactively applicable to taxable years
7 10 beginning on or after January 1, 2008, for tax credits issued
7 11 pursuant to this Act.

7 12 EXPLANATION

7 13 This bill provides for acquisition of equity interests in
7 14 wind energy production facilities by state banks financing
7 15 such facilities for customers, and relates to qualification
7 16 for specified wind energy tax credits.

7 17 The bill specifies procedures and requirements applicable
7 18 to a state bank structuring the financing of wind energy
7 19 production facilities as a membership investment with the
7 20 state bank as an equity investor acquiring ownership in the
7 21 facility.

7 22 The bill modifies provisions applicable to qualification
7 23 for the wind energy production tax credit pursuant to Code
7 24 chapter 476B consistent with state bank ownership, adds that a
7 25 person in possession of a wind energy tax credit certificate
7 26 can qualify for a refund of sales or use taxes and of
7 27 generation, transmission, or delivery taxes, and provides that
7 28 projects can qualify for the tax credit whether the
7 29 electricity is sold, as is currently the case, or utilized for
7 30 on-site consumption. The time period during which projects
7 31 placed in service may qualify for tax credits is extended from
7 32 July 1, 2009, to July 1, 2012. The bill adds to the
7 33 definition of a qualified wind energy production facility that
7 34 the facility consists of one or more wind turbines connected
7 35 to a common gathering line which have a combined nameplate
8 1 generating capacity of less than 35 megawatts.

8 2 The bill changes a current restriction on transferability
8 3 of credit certificates on a one-time basis to an unlimited
8 4 number of transfers, and provides that a replacement tax
8 5 credit certificate may reflect a different type of tax than
8 6 noted on the original certificate.

8 7 The bill takes effect upon enactment and applies
8 8 retroactively to taxable years beginning on or after January
8 9 1, 2008, with respect to tax credits issued pursuant to the
8 10 bill.

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